SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 170.

THE UNITED STATES AND THE KIOWA INDIANS, APPELLANTS,

vs.

JUAN B. MARTINEZ, ADMINISTRATOR OF JULIO MARTINEZ, DECEASED.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

JUAN B. MARTINEZ, ADMINISTRATOR OF JULIO Martinez, deceased,
vs.
THE UNITED STATES AND THE UTE INDIANS. } No. 5283. Indian Depredation.

I. *Petition. Filed October 24, 1891.*

To the Honorable the Chief Justice and Judges of the United States Court of Claims:

I.

Your petitioner, Juan B. Martinez, administrator as aforesaid, respectfully represents that he is a citizen of the United States, and resident of the county of Mora, in the Territory of New Mexico.

II.

Your petitioner further states that Julio Martinez, deceased, was the owner of the following-described property, which was taken or destroyed without just cause or provocation on the part of the owner or agent in charge thereof, on or about the month of June, A. D. 1873, in the Territory of New Mexico, by the Ute Indians, in amity with the United States, to wit, 700 head of sheep of the value of $2 each, $1,400, and the same has not been returned or paid for.

III.

Your petitioner further states that the said United States has supervisory charge of the said tribe of Indians, and is justly indebted to your petitioner in the sum of $1,400, the value of said property when taken or destroyed or used as aforesaid by the said Ute Indians, after allowing all just offsets and counterclaims.

2 IV.

Your petitioner therefore prays that in accordance with the provisions of the act approved March 3d, 1891, entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations," a judgment may be granted in favor of your petitioner by this honorable court for the amount claimed herein and for such other or further relief as your petitioner may be entitled to in the premises.

JUAN B. MARTINEZ,
Administrator, etc.,
By WM. B. MATTHEWS,
His Attorney.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Wm. B. Matthews, being first duly sworn, says that he is attorney of the petitioner, who is absent from the city; that no assignment of the

claim set forth in the above petition, or any part thereof, or any interest therein, has been made, except as in said petition stated; that the said petitioner is justly entitled to the amount herein claimed from the United States, after allowing all just offsets and counterclaims; and that all the facts stated in said petition are true to the best of his knowledge and belief.

WM. B. MATTHEWS.

Subscribed and sworn to before me this 24th day of October, A. D. 1891.

JOHN RANDOLPH, *Asst. Cl'k C. C.*

Claimant's address: Las Vegas, N. M.

WM. B. MATTHEWS,
Attorney for Claimant, 500 5th St., Washington, D. C.

General traverse. Filed February 5, 1901.

Now comes the Assistant Attorney-General and, answering the petition in the above-entitled cause, denies each and every allegation of fact contained therein, and asks judgment that the petition be dismissed.

JOHN G. THOMPSON,
Assistant Attorney-General.

3 III. *Motion for leave to file amended petition. Filed Nov. 4, 1902.*

In this cause comes the claimant by attorney, and representing and showing to the court that the original petition filed October 24, 1891, alleges that the depredation complained of was committed by the Ute Indians, and that the petition is in error in that statement, and that the depredation was committed by Indians of the Kiowa tribe, prays leave of the court to file the amended petition herewith tendered.

WILLIAM B. MATTHEWS,
Attorney for Claimant.

WILLIAM H. ROBESON,
Of Counsel.

This motion was allowed and thereupon the claimant filed the following amended petition, to wit:

4 IV. *Amended petition. Filed November 4, 1902.*

JUAN B. MARTINEZ, ADMINISTRATOR,
Julio Martinez, deceased,
vs.
THE UNITED STATES ET AL.
} Indian depredation No. 5283.

To the Honorable the Chief Justice and Judges of the Court of Claims:

Your petitioner, Juan B. Martinez, administrator of the estate of Julio Martinez, deceased, comes, and by leave of the court first had and obtained, files this his amended petition, and respectfully represents—

I. That he is a citizen of the United States, resident in Mora County, New Mexico, and the administrator of the estate of Julio Martinez,

deceased, in said county and Territory, who was at the time of the depredation hereinafter alleged also a citizen of the United States.

II. That the said Julio Martinez, deceased, was the owner of the following-described property, which was taken or destroyed in the month of June, 1873, in the Territory of New Mexico, by Indians of the Kiowa tribe, then in amity with the United States, to wit: 700 head of sheep of the value of $2 each, $1,400; that the said property was taken by the said Kiowa Indians without just cause or provocation upon the part of the owner or any of his agents in charge; that neither the owner nor his agents in charge sought private satisfaction or revenge, and that the said property has not been returned or paid for.

5 III. That the said Kiowa Indians and the United States are justly indebted to your petitioner, as the administrator of said estate of Julio Martinez, in said sum of $1,400, the value of said property when taken or destroyed as aforesaid.

IV. That your petitioner heretofore, to wit, at the December term, 1890, filed his original petition in which it is averred that the depredation was committed by the Ute Indians, but that since the filing of said petition it has developed that the Indians, by whom the depredation was committed, were the Kiowas, as now alleged.

Your petitioner therefore prays:

That in accordance with the provisions of the act approved March 3, 1891, entitled "An act to provide for the adjudication and payment of claims arising from Indian depredations," a judgment be granted in favor of your petitioner by this honorable court against the Kiowa Indians and the United States for the amount claimed herein, and for such other and further relief as your petitioner may be entitled to in the premises.

(Signed) JUAN B. MARTINEZ,
By WM. H. ROBESON, *Attorney.*

(Signed) WM. B. MATTHEWS,
Attorney.

(Signed) WM. H. ROBESON,
Of Counsel.

DISTRICT OF COLUMBIA, *ss:*

William H. Robeson, being first duly sworn, says that he is one of the attorneys for the petitioner who is absent from the city.

That the facts stated in the foregoing petition are true to the best of his knowledge, information, and belief, and that the petitioner is justly entitled to the amount therein claimed, there being no just offsets or counterclaims.

(Signed) WILLIAM H. ROBESON,
Attorney for Claimant.

Sworn to and subscribed before me this November 4, 1902.

[SEAL.] (Signed) L. M. FOX, *Notary Public.*

6 V. *Defendants' plea. Filed November 5, 1902.*

Now comes the Assistant Attorney-General, appearing in behalf of the United States and the Kiowa Indians, and, for plea to the amended declaration herein filed, says that the claimant ought not to have and

maintain his action against the Kiowa Indians for the reason that his claim is barred, no claim against the said Kiowa Indians having been presented to the court within three years after the passage of the act of March 3, 1891.

And this the defendants are ready to verify.

JOHN G. THOMPSON,
Assistant Attorney-General.

November 19, 1902, the defendants' plea in bar was overruled by the court.

And the case was thereupon submitted on the evidence and briefs.

VI. *Traverse of amended petition. Filed November 19, 1902.*

Now comes the Assistant Attorney-General, and, answering the amended petition in the above-entitled cause, denies each and every allegation of fact contained therein, and asks judgment that the petition be dismissed.

JOHN G. THOMPSON,
Assistant Attorney-General.

7 VII. *Findings of fact and conclusion of law. Filed December 1, 1902.*

JUAN MARTINEZ, ADMINISTRATOR OF THE estate of Julio Martinez, deceased, *v.* THE UNITED STATES AND THE KIOWA INDIANS.	No. 5283. Indian depredation.

This case having been heard by the Court of Claims on the amended petition, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

At the time of the depredation, hereinafter stated, the claimant's decedent was a citizen of the United States.

II.

In June, 1873, in Mora County, New Mexico, Indians belonging to the Kiowa tribe of Indians took and drove away property of the kind and character described in the petition, the property of claimant's decedent, which was reasonably worth the sum of $690.

Said property was taken, as aforesaid, without just cause or provocation on the part of the owner or the agent in charge, and has never been returned or paid for.

III.

At the time of said depredation the defendant Indians were in amity with the United States.

CONCLUSION OF LAW.

8 Upon the foregoing findings of fact, a majority of the court decides, as a conclusion of law, that the claimant recover judgment against the United States and the Kiowa Indians in the sum of six hundred and ninety dollars ($690.00).

It is ordered that out of the said judgment the sum of one hundred and three dollars ($103.00) be allowed and paid to William B. Matthews, claimant's attorney of record, in full for all services in this case.

The original petition against the Ute Indians is dismissed.

BY THE COURT.

9 VIII. *Judgment of the court.*

JUAN B. MARTINEZ, ADMINISTRATOR of Julio Martinez, deceased,
vs.
THE UNITED STATES AND THE KIOWA tribe or nation of Indians.
} Indian depredation, No. 5283.

At a Court of Claims held in the city of Washington on the first day of December, A. D. 1902, judgment was ordered to be entered up, as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said claimant, Juan B. Martinez, administrator of Julio Martinez, deceased, do have and recover of and from the United States and the Kiowa tribe or nation of Indians, committing the wrong for which this judgment is rendered, the sum of six hundred and ninety dollars ($690), of which sum there is allowed William B. Matthews, the claimant's attorney, for prosecuting said claim, the sum of one hundred and three dollars ($103), fixed by the court according to the provisions of the act of March 3, 1891, chapter 538, section 9 (1, Supplement of Revised Statutes, 2d edition, pages 915, 916).

BY THE COURT.

10 IX. *Application for and allowance of appeal.*

JUAN B. MARTINEZ, ADMINISTRATOR OF JULIO MARTINEZ, deceased,
vs.
THE UNITED STATES AND THE KIOWA INDIANS.

Now comes the Assistant Attorney-General and prays an appeal from the judgment of this court to the Supreme Court of the United States.

JOHN G. THOMPSON,
Assistant Attorney-General.

Filed December 4, 1902.

DECEMBER 4, 1902.

Ordered that the application of the defendants for an appeal to the Supreme Court of the United States in the above-entitled cause be allowed as prayed for.

BY THE COURT.

11 In the Court of Claims.

JUAN B. MARTINEZ, ADMINISTRATOR of Julio Martinez, deceased,
vs.
THE UNITED STATES ET AL.
} No. 5283. Ind. depredation.

I, John Randolph, assistant clerk of the Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact and conclusion of law, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I hereunto set my hand and affixed the seal of said Court of Claims this 15th day of December, A. D. 1902.

[SEAL.]

JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) File No. 18753. Court of Claims. Term No. 170. The United States and the Kiowa Indians, appellants, vs. Juan B. Martinez, administrator of Julio Martinez, deceased. Filed December 17th, 1902.

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